the written option which oral agreement contained a material term of the bargain.

It is settled law that an option is a unilateral contract which does not become binding on the grantor of the option until the exact terms of the option are complied with. In the present case the purchaser was required to deliver the Acceptance Copy of the option together with "10% of the purchase price" to the solicitors of the grantor. This condition had not been complied with and as an option to purchase land is a "contract, grant or disposition of property" which is required by law to be in writing the purchaser is precluded by section 92 of the Evidence Act from proving that the parties had orally agreed that the $2,000 she had paid as consideration for the grant of the option could be deducted from the purchase price or from the 10% deposit she was required to pay when exercising the option.

For these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *A.S.K. Wee & Co., Hilborne & Co.*

MOHAMED YEANIKUTTY v. FAR EAST TRUCK INC. MANUFACTURING (PTE.) LTD.

[O.C.J. (Chua J.) August 24, 1982]
[Singapore – Suit No. 1305 of 1978]

Labour Law – Injury in the course of employment – Damages – Whether the defendant employers were negligent or in breach of the duty to take reasonable care for the safety of the plaintiff/servant – Factories Act 1973

Tort – Negligence – Workman injured – Whether employers were in breach under Factories Act 1973

The plaintiff claimed against the defendants damages for personal injuries suffered by him in the course of employment by the defendants as a mechanic on July 3, 1975. The plaintiff claimed that the defendants were negligent in (1) failing to provide a safe system of work; (2) failing to provide adequate appliances to enable the plaintiff to carry out the work; and (3) failing to provide any or adequate supervision.

Held: there is no doubt that the cause of the accident was the plaintiff's total disregard in complying with the system of work devised by the defendants for the oil seal change operation. The defendants' claim would therefore be dismissed.

CIVIL SUIT.

H.E. Cashin for the plaintiff.
Tan Tee Seng for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff's claim is for damages for personal injuries and consequential loss suffered by him and caused during the course of his employment by the defendants as a mechanic on the July 3, 1975, by the negligence of the defendants, their servants or agents and/or by breach by the defendants of their duty to the plaintiff as employers of the plaintiff to take reasonable care for the safety of the plaintiff as their servant and/ or by breach by the defendants of statutory duty under the Factories Act, 1973.

The particulars of breach of statutory duty are:

"(a) Failing to provide sufficient training or instructions in the process of work undertaken to the plaintiff ... thereby exposing him to the dangers likely to arise in connection therewith contrary to section 28(1)(a) of the said Act.

(b) Failing to provide adequate supervision by a person who has a thorough knowledge and experience of the said lifting equipment contrary to section 28(1)(b) of the said Act."

The plaintiff was employed as a mechanic by the defendants. The defendants are dealing in mechanical forklifts, their maintenance and repairs. On the July 3, 1975, the plaintiff and one Lim Hee Kian, another employee of the defendants, were instructed to repair an electric forklift at the premises of Philips Singapore Pte. Ltd. at Toa Payoh, Singapore. The repair job was to replace an oil seal of the lifting cylinder.

The lifting equipment consists mainly of three cylinders fitting into one another and by a hydraulic system these cylinders could be extended in a telescopic fashion. At one end of this system is a pin at the top of the second or middle cylinder which fits into an aperture at the lower surface of the upper cross bar of the mast unit called "the third layer" and they are secured by means of a nut. The other end of this system is the lower end of the third or innermost cylinder which is second to the lower cross bar of the mast unit called "the second layer". These mast units provide the right frame to give structural support in the lifting operation. The first or outermost cylinder in this hydraulic system may be moved up and down along the second cylinder.

At the material time the oil seal situated at the top of the first cylinder was leaking. According to the plaintiff, to replace the oil seal, the nut at the top of the first cylinder has first to be unscrewed and slipped out of the second cylinder, thus expos-

ing the oil seal which then has to be similarly slipped out of the second cylinder. Therefore it is necessary to free the top end of the second cylinder removing the nut from the upper cross bar of "the third layer". To do this "the third layer" has to be lifted to a certain height in order to have sufficient slack in the hydraulic system to allow the second cylinder to slip out of the aperture of the upper cross bar of "the third layer" and to have sufficient space to allow the nut end of the oil seal to be slipped out. A wooden block is placed between the lower cross bar of "the second layer" and the lower end of "the third layer" to prevent "the third layer" from dropping down when the oil seal is removed.

The plaintiff says that on that day he placed a wooden block and inserted it between "the second and third layers" adjusting "the third layer" to a required height. As a precaution he also inserted a piece of waterpipe in between the upper cross bars of "the second and third layers". As there was not sufficient space to allow the removal of the oil seal he then raised "the second and third layers". He then proceeded to replace the oil seal. Having removed the oil seal from the cylinder, he saw the whole hydraulic unit falling away from him. He reached out to retrieve the said unit when suddenly the upper cross bar of "the third layer" dropped and crushed his arms against the upper cross bar of the "second layer" thereby causing him injury.

The particulars of the defendants' negligence are enumerated in the Statement of Claim and can be summarised into three main heads:–

(1) failing to provide a safe system of work;

(2) failing to provide adequate appliances to enable the plaintiff to carry out the work;

(3) failing to provide any or adequate supervision.

The defendants have set out in their Defence the procedure to be followed to effect changes to the oil seal in the lifting cylinder of the forklift truck as follows:–

"(1) The carriage of the machine is first raised approximately 25 cm. by working the hydraulic system of the truck.

(2) A wooden block is then placed under the carriage.

(3) The pressure from the truck's hydraulic system is released whereupon the carriage descends and rests on the wooden block.

(4) The chain of the machine is released.

(5) The Inner Mast of the truck is then raised approximately 25 cm., again using the truck's hydraulic system.

(6) Another wooden block is then placed in the inner side of the immoveable part of the mast to support the raised portion.

(7) Two rollers on the machine are released.

(8) The bolt on top of the machine is then released. This ought to be performed by the employee standing on the lower body of the machine, or from any raised platform or support on the ground.

(9) The cylinder is then lowered by the truck's own hydraulic system.

(10) Access can now be gained to the Oil Seal for the necessary changes to be effected on it.

The defendants have put the blame on the plaintiff for the accident. They say that the plaintiff had been fully trained by them to effect changes to the oil seal in the lifting cylinder of the forklift truck and had been instructed to adhere strictly to the procedures and also had relevant experience in the procedures himself. The plaintiff instead of adhering to step (6) of the procedure went against instructions and wedged a piece of piping in between the upper cross bars of the "second and third layers" to substitute the function of support which would otherwise have been provided by the wooden block placed in the inner side of the immoveable part of the mast to support the raised portion. The metal pipe, being an insecure support, slipped, causing the mast to descend onto the hands of the plaintiff while he was working on the changing of the seal. Furthermore the plaintiff did not adhere to step (8) of the operation, whereby the bolt on top of the machine should have been released by the plaintiff from the floor area in front of the forklift. The plaintiff instead climbed on to the overhead guard above the driver's seat which is behind the carriage, to effect the change of the oil seal.

The plaintiff says that there were two groups of mechanics dealing with forklifts, one dealing with electric forklifts and the other dealing with diesel forklifts. He was in the diesel section and he had never handled an electric forklift except the one in question which caused the injuries to him. The diesel forklift has two layers whereas an electric forklift has three layers. He had not been trained to handle an electric forklift. The plaintiff called Krishnasamy, P.W. 5 to support his contention that he was not trained in handling an electric forklift.

I want to say at the outset that I find the

plaintiff and Krishnasamy very unreliable witnesses and that they would lie when it suited them.

The plaintiff had alleged that there are differences between a diesel forklift and an electric forklift and a two-layer forklift and a three-layer forklift. There is, however, ample evidence adduced by the defendants to show (1) that the only difference between a diesel forklift and an electric forklift is only the means of power supply to drive the forklift from point A to point B. In the diesel forklift power is provided by a diesel engine. In an electric forklift power is produced by battery and electric motor; (2) that the hydraulic system in the diesel and electric forklifts is the same; (3) that in replacing an oil seal the operation is the same with a two-layer forklift and a three-layer forklift, and (4) that the plaintiff was trained to repair and maintain either a diesel or an electric forklift.

The defendants have sufficiently established that using a block of wood to support the third layer is a safe method of work and it is a method of work which is accepted in the repairs of forklifts.

The plaintiff knew that the wooden block had to be used to support the third layer and he knew how it was to be used. There is no doubt that if he had done so this accident would not have happened. Instead of which he chose to use his own method of supporting the third layer by using the water pipe. If the plaintiff had been working in front of the forklift, as he had been trained to do, when the third layer was dislodged, his hands would not have been caught by the cross bar of third layer.

Then it is said that the defendants did not supply adequate equipment and appliances. The defendants have adduced ample evidence to show that the defendants provided sufficient equipment. The changing of the oil seal is a simple operation and all mechanics in the defendant company knew how to carry out the operation.

There is no doubt that the cause of the accident was the plaintiff's total disregard in complying with the system of work devised by the defendants for the oil seal changing operation.

The plaintiff's claim is dismissed with costs.

Claim dismissed.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*

PERTAMINA v. KARTIKA RATNA THAHIR & ORS.

[O.C.J. (Sinnathuray J.) September 27, 1982]
[Singapore – Originating Summons No. 308 of 1976]

Practice and Procedure – Statement of Claim – Application to strike out whole statement of claim on grounds that it was scandalous, frivolous or vexatious – Defence calculated to prejudice, embarrass and delay action – Application dismissed.

The facts in this case were the following: Mr. Thahir, an Indonesian national, was a senior employee and executive of the plaintiffs. He died on July 23, 1976. On that day, there was with the Sumitomo Bank Ltd. in Asian Currency Unit (ACU) deposits DM 53, 972, 374.12 and US$1,202,208.73 in the name of Mr. Thahir, and/or Mrs. Thahir, the first defendant.

On July 27, 1976 Mrs. Thahir went to the bank and demanded payment to her of sums totalling DM 8,310,982.99 and US$608,959.42. She also demanded that the balance of the said ACU deposits be transferred to her sole name. That same day, Mr Ibrahim Thahir, one of the children of the deceased, directed the bank not to pay out any monies to Mrs. Thahir until the respective beneficial interests of Mrs. Thahir and the estate of the deceased were determined. The bank was in a difficult position because of the two claims made against the bank by different persons. The bank applied to the court for relief. Mrs. Thahir was cited as first defendant. The two sons of the deceased were made the second defendants to represent the estate of the deceased. In June 1977, Pertamina were added as third defendants. In October 1979, Pertamina took out an interlocutory application for an issue to be stated and tried between the first, second and third defendants as to which of them was entitled to the sums of money represented by the ACU deposit accounts at the bank and for consequential orders.

In November 1979 the first defendant took out a Summons-in-Chambers for an order that the Originating Summons of the bank be dismissed on the grounds that it was misconceived. She sought also that an issue be ordered between Pertamina and herself in which Pertamina shall be plaintiffs and she shall be defendant.

The plaintiffs claimed that Mr. Thahir had unlawfully and improperly obtained monies as bribes and/or secret commissions which belonged to the plaintiffs; that he had put these illegal gains in the bank in the joint account of himself and the first defendant. The plaintiffs claimed that the first defendant was party to the wrongdoings of Mr. Thahir. The first defendant denied this. She said that "the fact that Thahir received income apart from his salary was not secret, but was known both to the plaintiffs by, *inter alia*, their said President Director, and to the plaintiffs' principal, the State Government, who consented thereto".

Held: (1) nowhere in the defence did the first defendant take the issue or even reserve the point that the plaintiffs' statement of claim did not disclose a reasonable cause of action in the issue;